



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED)
PETITION FOR APPROVAL OF THE)
TRANSFER OF CONTROL OF NEW EDGE)
NETWORK, INC., D/B/A NEW EDGE)
NETWORKS, TO EARTHLINK, INC.)

ORDER OF APPROVAL

DOCKET NO. TM06010011

(SERVICE LIST ATTACHED)

BY THE BOARD:

On January 6, 2006, New Edge Network, Inc., d/b/a New Edge Networks (New Edge), and EarthLink, Inc. (EarthLink and, together with New Edge, Petitioners) pursuant to N.J.S.A. 48:2-51.1 filed a petition with the Board of Public Utilities (Board) requesting the approval of the transfer of control of New Edge from New Edge Holding Company (New Edge Holding) to EarthLink. Upon consummation of the transfer, New Edge will become an indirect subsidiary of EarthLink and continue to offer services on the same terms, rates and conditions that it currently provides such services in the State.

BACKGROUND

New Edge is a privately owned company organized, under the laws of the State of Delaware, with its principal offices located in Vancouver, Washington. According to the petition New Edge is a national provider of secure multi-site managed data networks and dedicated Internet access. New Edge's customers include telecommunications carriers, small to midsize businesses, and large corporations. Some of the services offered by New Edge include virtual private networks, private networks, frame relay, frame over DSL, ATM, private line xDSL, DS1, and DS3. New Edge received its authority to provide local exchange and interexchange telecommunications services in New Jersey on March 27, 2000. See I/M/O the petition for an Order Authorizing New Edge Network, Inc. D/B/A New Edge Networks to provide switched and dedicated resold and facilities-based, interexchange and local exchange telecommunications services throughout New Jersey, Docket No. TE99100774. In New Jersey, New Edge currently has approximately 300 customers.

EarthLink is a publicly traded Delaware corporation with its principal offices located in Atlanta, Georgia. According to the petition, EarthLink is primarily an Internet service provider, providing nationwide Internet access and related services to individual and small business customers. Its major service offerings are narrowband, broadband, and wireless Internet access service; web hosting; and advertising and related services. The petition states that EarthLink has over five million customers nationwide. EarthLink does not hold authorization to provide services in New Jersey or any other state.

DISCUSSION

According to the petition, pursuant to an Agreement and Plan of Merger (Merger Agreement) executed between New Edge Holding, MergerCo and EarthLink, MergerCo, a wholly-owned subsidiary of EarthLink, will merge with New Edge Holding, the parent of New Edge, with New Edge Holding continuing as the surviving corporation. A result of the merger will be that New Edge will be an independent company and a wholly-owned subsidiary of New Edge Holding, which in turn will be a wholly-owned subsidiary of EarthLink. Upon completion of the merger, EarthLink will control New Edge through the ownership of 100% of the outstanding common stock of New Edge Holding. New Edge will continue to operate as an independent company under its current name as a wholly-owned indirect subsidiary of EarthLink.

Petitioners indicate that the acquisition of New Edge by EarthLink will result in significant benefits for New Jersey consumers, and will advance important state public policy goals. Petitioners aver that the combination of New Edge's facilities-based network and its expertise in small and medium enterprise (SME) and carrier sales with EarthLink's marketing staff and expertise, and its strength in providing consumer-friendly Internet services, will create a stronger competitor in the residential SME broadband market in New Jersey, thus promoting competition within the State. Petitioners also state that following the transaction, all services will continue to be provided to New Edge's customers without interruption and at the same rates, terms and conditions. Petitioners also note that New Edge Networks presently has one employee in New Jersey and anticipates that the synergies from the transaction will lead to growth in New Edge's business in New Jersey, which in turn may necessitate the hiring of additional employees in the State.

FINDINGS AND CONCLUSIONS

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Nor will there be a negative impact on competition. Likewise, there will be no negative impact upon employees in the State. Moreover, a positive benefit may be expected from the strengthening of New Edge's competitive posture in the telecommunications market.

Accordingly, after careful review of this matter, the Board FINDS that the transaction will have no negative impact on competition, the rates of current customers, or on employees. The Board also FINDS that the transfer will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, FINDS that the transfer is in accordance with the law and in the public interest. The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer. The Board FURTHER ORDERS that the approval in this Order shall become null and void and of no effect to the extent it has not been exercised prior to August 31, 2006.

DATED: *2/24/06*

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M. Fox
JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

Connie O. Hughes
CONNIE O. HUGHES
COMMISSIONER

Joseph L. Fiordaliso
JOSEPH L. FIORDALISO
COMMISSIONER

Christine V. Bator
CHRISTINE V. BATOR
COMMISSIONER

ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities

Kristi Izzo

Service List

Docket No. TM06010011

James Laskey, Esq.
Norris, McLaughlin & Marcus, P.A.
721 Route 202-206
Bridgewater, NJ 08807

Donna Lampert
Mark O'Connor
Lampert & O'Connor, P.C.
1750 K Street NW, Suite 600
Washington, DC 20006

Penny H. Bewick
Vice President – External Affairs
New Edge Networks, Inc., d/b/a
New Edge Networks
3000 Columbia House Boulevard
Suite 106
Vancouver, WA 98661-2969

Samual R. DeSimone, Jr.
EVP, General Counsel
EarthLink, Inc.
1375 Peachtree Street, Level A
Atlanta, GA 30309

Seema M. Singh, Esq.,
Ratepayer Advocate
Division of the Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

James F. Murphy
Rocco Della Serra
Board of Public Utilities
Division of Telecommunications
Two Gateway Center
Newark, NJ 07102

Elise Goldblat, Esq.
Kenneth Sheehan, Esq.
Department of Law & Public Safety
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07102